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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARK R. FERNALD, TREVOR W. MACDOUGALL,  
MARTIN A. PUTNAM, REBECCA M. BRYANT,  
CHRISTOPHER J. WRIGHT, MICHAEL ARCAND,  
and CHRISTOPHER T. CHIPMAN

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Appeal 2009-013386  
Application 10/755,708  
Technology Center 2800

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Before MAHSHID D. SAADAT, ALLEN R. MACDONALD, ROBERT E.  
NAPPI, CARLA M. KRIVAK, and ERIC S. FRAHM, *Administrative  
Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants have requested a rehearing of the decision of the original panel to affirm the obviousness rejections of claims 21 and 23 to 30 and make a new ground of rejection for claim 21 (Req. Reh’g. 1, 3).<sup>1</sup>

*Claim 21*

Claim 21 on appeal reads as follows, with emphasis added:

21. A system for fusing first and second optical waveguide sections together, each optical waveguide section having a core surrounded by a cladding, comprising:

at least one source laser to provide at least one laser beam;

first and second stages to hold the first and second optical waveguides, respectively, wherein at least one of the first and second stages is movable to provide relative motion between the first and second optical waveguides while holding portions of the first and second optical waveguides to be fused within a fusion splice region while aligning their respective cores; and

a beam delivery arrangement to deliver at least two laser beams to different locations of the fusion splice region, wherein the at least two laser beams are generated from the at least one laser beam provided by the at least one source;

wherein at least one of the stages is capable of holding an optical waveguide having a cross-sectional dimension greater than 400 um.

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<sup>1</sup> In a decision mailed March 17, 2011, the Board affirmed the Examiner’s obviousness rejections of claims 1-12, 21, and 23-30 and entered a new ground of rejection for claims 1 and 21 as obvious over Chapman, Maas, and Walters. Appellants have not requested a rehearing of the decision of the original panel to affirm the obviousness rejections of claims 1-12 or the new ground of rejection for claim 1.

In the original decision, the original panel rejected claim 21 under a new ground of rejection as being unpatentable under 35 U.S.C. § 103(a) over the combination of Chapman, Maas, and Walters (Dec. 7). The original panel also affirmed the following three rejections made by the Examiner (*see* Dec. 3, 8):

1. The rejection of claims 1-3, 6, 7, 9, 12, and 23-25 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Chapman, Maas, and Walters;
2. The rejection of claims 1, 4, 5, 21, 27, and 28 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Chapman, Maas, Walters, and Eskildsen; and
3. The rejection of claims 1, 8, 10, 11, 21, 26, 29, and 30 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Chapman, Maas, Walters, and Huang.

In the Final Rejection, the Examiner determined that Chapman teaches “a method and apparatus for placing two optical fibers [12 and 14 in Fig. 3] in at least two stages wherein the stages allow movement of the fibers relative to each other” (Final Rej. 4). In making the rejection of claim 21 over the combination of Chapman, Maas, and Walters, the original panel relied upon the Examiner’s discussion of Chapman at pages 6-7 and 13-16 of the Answer (Dec. 7). Based upon these teachings in Chapman, the Board entered a new ground of rejection for claim 21 and affirmed the obviousness rejections of claims 21 and 23-30 on appeal.

Appellants argue (Req. Reh’g. 2) that the Board overlooked Appellants’ arguments with respect to claim 21, as well as claims 23-30

which are dependent upon claim 21. Appellants request reversal of the rejections with respect to claims 21 and 23-30 (Req. Reh’g 3).

Inasmuch as the Board relied on Chapman as teaching first and second stages to hold first and second optical waveguides, and one of the stages being movable to provide relative motion between the first and second waveguides, Appellants’ argument in the request for a rehearing is reasonable, and the request is hereby granted for the reasons discussed below.

Chapman’s Figure 3 shows a clamp assembly 28 having one movable stage 30 for holding first and second optical waveguides 12 and 14 (¶ [0017]). The stage 30 is movable relative to the laser beams 19 and 26 (¶ [0017]). The optical waveguides 12 and 14 are held in place by clamping arms 74 and 76, secondary clamps 68 and 70, and holder 32 (¶ [0017]).

We agree with Appellants’ argument (Req. Reh’g. 2-3) that Chapman teaches a single stage 30 that moves with the optical fibers 12 and 14 relative to laser beams 19 and 26, and thus fails to teach a stage being “movable to provide relative motion between the first and second optical waveguides,” as set forth in claim 21 on appeal.

In summary, the obviousness rejection of claims 21 and 23-30 based upon the teachings of Chapman, Maas, and Walters cannot be maintained in light of Appellants’ argument. In view of the argument presented for claim 21, the obviousness rejections of claims 21 and 23 to 30 cannot be maintained.

As indicated *supra*, Appellants’ request for a rehearing of the original decision is granted, and the original decision is modified to reflect our

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agreement with Appellants' arguments concerning claims 21 and 23-30. Thus, the original panel's affirmance of the Examiner's obviousness rejections of claims 21 and 23-30 and the original panel's new ground of rejection of claim 21 are hereby withdrawn.

#### CONCLUSION

The Examiner's obviousness rejections of claims 21 and 23-30 are reversed.

One this record claims 21 and 23-30 have not been shown to be unpatentable.

REHEARING  
GRANTED

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